

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRIMINAL MISC.NO.14888 M OF 2006

DATE OF DECISION: DECEMBER 01, 2006

Kiranjit Kaur and others

.....Petitioners

VERSUS

State of Punjab and others

....R espondents

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. Hemant Saini, Advocate,  
for the petitioners.

Mr. M. C. Berry, Sr.DAG, Punjab.

Mr. Akshay Bhan, Advocate.

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RANJIT SINGH, J.

The petitioners are seeking quashing of an FIR No.357 dated 8.10.2005 registered under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Sadar Amritsar. Claiming themselves to be closely related to the complainant, the petitioners have pleaded that the impugned FIR would not have any trapping of criminal liability and would only show civil dispute, which is result of oral partition between closely related partners, and as such, prayer for quashing the FIR.

The facts, as pleaded, are that the petitioners and complainant, being descendants of one Diwan Singh, were joint in business. They were running various firms like M/s Onkar International, M/s Empire Processors, M/s Govind Synthetics, M/s Guru Knitting Mills, M/s Narinder Textile Mills and a shop named Narinder Textile Mills in Bazar Tahli Sahib, Amritsar. M/s Onkar International is being run by a partnership concern constituted in September 20,1993 with Navtej Singh, Buland Iqbal Singh and Manmohanjit Singh being the partners to the extent of 20% each. Narinder Singh and Kiranjit Kaur, petitioners, were partners to the extent of 22% and 18% respectively. Similarly M/s Empire Processors is also a partnership concern between Jagjit Singh and Kiranjit Kaur as partners. So is the case in respect of M/s Govind Synthetics, which was constituted on April 1,1988 and re-constituted on October 20,1998 as Inderjit Singh son of Navtej Singh became major. It is, then pleaded that the family had entered into an oral partition of the firms in the year 2001 whereby complainant, Buland Iqbal Singh and Navtej Singh both sons of Balwant Singh got m/s Guru Knitting Mills and M/s Narinder Textile Mills to their shares. They statedly also got 40% share of the shop having three floors at Bazar Tahli Sahib and 40% share of the land of M/s Empire Processors situated at Kashmir Road, Amritsar. As per averment in the petition, Kiranjit Kaur, Narinder Singh and Manmohanjit Singh, petitioners, got M/s Onkar International to their shares alongwith 60% of the shop situated at Bazar Tahli Sahib, Amritsar and 60% of the land of the Empire Processors. It is further claimed that ever since the date of this oral partition, which became effective from

17.11.2001, the parties were doing their separate business through the respective firms. Besides some other evidence, reference has also been made to filing of separate income-tax returns and separate representations before the Sales Tax Department etc. to prove the oral partition. Mention has also been made to an agreement executed by the complainant and the petitioners on 3.5.2004 and the re-payment of loan amounts in the account of M/s Onkar International to say that oral partition indeed had been effected between the parties. It is then mentioned that M/s Omkar Processors had taken M/s Onkar International on lease by way of licence deed dated 25.12.2003. M/s Onkar International was situated on a land measuring 4881 Sq.Yards, which was owned by Narinder Singh, Manmohanjit Singh, Kiranjit Kaur, Buland Iqbal Singh and Navtej Singh to the extent of 900 Sq.Yards each. The remaining 381 Sq.Yards land was statedly owned by all of them jointly. This arrangement was statedly done to complete the bank formalities for a loan whereas in fact this land had been purchased by M/s Onkar International. Claiming that complainant Navtej Singh and Buland Iqbal Singh had already taken their share after the oral partition, which took place on 4.11.2001 and started running their concern exclusively, the petitioners constituted another firm M/s Omkar Processors. In this background, it is submitted that the complainants have been unfair in making claim on the firms owned by the petitioners exclusively and have falsely alleged transfer of amount of M/s Onkar International and M/s Empire Processors to the accounts of M/s Omkar Processors. It is further alleged that since the complainants had already taken their share, the case has been

registered falsely to blackmail the petitioners. These allegations of transfer of amounts have been termed to be bald and devoid of any truth. It is further claimed that details of the business dealings in this regard have been duly reflected in the account books as well as income-tax returns maintained by the firm. Reference has also been made to an enquiry held by Superintendent of Police (D), who was of the view that no criminal offence is made out and had recommended cancellation of the FIR on the ground that dispute is exclusively of a civil nature. Character of the complainants is impinged by saying that they have been charge-sheeted by C.B.I. in the infamous Siti Cable Scam at Amritsar. The petitioners have also made reference to another enquiry marked by Deputy Inspector General of Police, Border Range, where the earlier finding and recommendations were reiterated by Superintendent of Police (D), Amritsar. The grouse of the petitioners is that these two enquiry reports held prior to registration of the FIR were not referred to anywhere by the Investigating Officer of Economic Offence Wing, who investigated the matter, subsequently leading to registration of FIR. It is otherwise conceded that the challan in this case has been presented but this, as per the petitioners, was done while ignoring two enquiry reports conducted by Superintendent of Police (D), Amritsar, which are not forming part of this challan. In this background, it is pleaded that there is absolutely no offence made out against the petitioners from a perusal of the FIR and hence, the same be quashed.

Notice in this case was issued and replies on behalf of the State as well as the complainants have been filed.

In the identical stand taken by the State as well as

complainants, it is disclosed that the petitioners have deliberately presented a twisted and distorted picture of the facts. As per the reply, total land of M/s Onkar International was 4881 Sq.yards, out of which 1800 Sq.Yards is owned by each partner, namely, Navtej Singh and Buland Iqbal Singh, the complainants, and this 1800 Sq.Yards of land is their sole ownership. Further allegation is that accused-petitioners have mis-appropriated this land by selling the same by forging fake documents and using the same fraudulently and dishonestly as genuine to form a new fake firm and, thus, have cheated the complainants, real owners of the land. It is further disclosed that FIR under various Sections is rightly registered against the petitioners after detailed enquiry conducted by Economic Wing and upon opinion of the D.A. (Legal), which was endorsed by another enquiry conducted by Superintendent of Police City I, IPS, who had held the enquiry under the orders of D.G.P. and Human Rights Commission. It is also disclosed that challan has been presented in this case in the Court on 7.3.2005 and the case was last adjourned for 16.5.2006. It is pleaded that as per the well settled principle of law, when the challan alongwith police report has been filed in the Court, it obviously means that the investigating agency has already collected enough material and evidence to prove prima-facie case against the accused-petitioners and the case should now be left for trial by the trial Court. The respondents also pleaded that the petitioners would be at liberty to raise all these pleas at the time of framing of charge and that no case for quashing the FIR is made out.

At the outset, counsel for the petitioners was confronted with this factual position. He had taken time to seek instructions if the

petitioners were ready and willing to raise all these points at the time of framing of charges but thereafter the counsel expressed that he was under instruction to press this petition for quashing of the FIR and accordingly, the case is heard.

The main stress of the petitioners in seeking quashing of this FIR apparently is the oral partition that had allegedly taken place between the petitioners-respondents. The case set up is that ever since the date of oral partition i.e. 4.11.2001, the petitioners have been running their own concern by the name of M/s Omkar Processors with which the respondents would not have any concern as they had already taken their shares. At the time of issuance of notice in this case, somewhat different plea and stand appear to have been taken on behalf of the petitioners. The order dated 16.3.2006 would show that by placing reliance on different judgments of Hon'ble Supreme Court, as noticed in the order, it was submitted that there is no question of mis-appropriation and the dispute between the partners is only for rendition of accounts, which would primarily be of civil nature. This is contrary to the pleadings in the petition. As already noticed, the case set up by the petitioners is that the complainants had already taken their shares and had no concern with M/s Omkar Processors and hence, the petitioners could not be blamed for anything or for transfer of accounts from one concern to another. Certainly, it is not a case of settlement of accounts between the petitioners and the respondents as was projected at the time of seeking notice in this case. The petitioners have made mention to various facts in the petition to show or to indicate that oral partition indeed had taken place. These facts are disputed by the

respondents. Thus, it is first required to be determined if there had been any oral partition between the petitioners and the respondents. The rest of the averments raised by the petitioners would flow from this aspect, which is required to be determined first. Since there is a serious dispute with regard to this fact, it cannot be said that this dispute is between the partners or is of civil in nature. A perusal of the FIR and the stand as taken in the reply after investigation clearly show that the land belonging to the complainants has allegedly been sold by forging fake documents and these fake documents were fraudulently and dishonestly used as genuine to form a new firm. The allegations, if taken to be true, would certainly reveal an offence of cheating. Accordingly, it will be a matter of fact required to be proved if indeed any cheating was made out or not. No doubt, two enquiries had been held in this case but the contents of the reply would show that thereafter the matter was enquired into by the Economic Wing Officer and FIR was then registered after obtaining opinion of D.A. (Legal). It is also seen that another enquiry was conducted by S.P.City I, IPS, which was done under the orders of D.G.P. and Human Rights Commission. It is thereafter that challan is filed against the petitioners. The enquiries conducted by S.P. (D), on which strong reliance has been placed by the petitioners, would be a material which the petitioners may be entitled to lead in defence. On that basis, it would not be possible to hold that no offence is made out against the petitioners and the present case is a case of civil dispute in nature.

To be fair to the petitioners' counsel, he has referred to various judgments to urge that offence of cheating may not be made

out in this case. The counsel has referred to Uma Shankar Gopalika Vs. State of Bihar and another, (2005) 10 Supreme Court Cases 336. It was held in this case that breach of contract would amount to cheating only if intention to cheat was existing at the very inception. I am unable to appreciate how this proposition would be attracted in the present Case. Here is not a case of breach of contract nor can it be said to be a case of pure civil dispute. All these aspects would depend upon the facts of each case.

Velji Raghavji Vs. State of Maharashtra, AIR 1965 Supreme Court 1433, another case relied upon by counsel for the petitioners, related to an offence of criminal breach of trust when the dominions of partners over partnership assets are concerned. This would also not be attracted to the facts of the present case as no case of criminal breach of trust is alleged against the petitioners.

Dr.Vimla Vs. The Delhi Administration, AIR 1963 Supreme Court 1572, was a case where term 'defraud' was interpreted by the Hon'ble Supreme Court to mean a deceit and injury to person deceived. How this case will fit into the facts of the present case cannot be appreciated. It will be seen during the course of trial if the element of deceit and injury to the person deceived is revealed in this case or not. That would depend upon the evidence produced. Prima-facie, nothing is made out from the pleadings and the element of deceit or injury is absent in this case.

The cases State of Gujarat Vs. Jaswant Lal Nathalal, AIR 1968 SC 700, S.Harnam Singh Vs. The State (Delhi Admn.), 1976 Crl.L.J. 913, The State of Kerala Vs. A.Pareed Pillai and another, 1972 Crl.L.J. 1243, Rajinder Singh Vs. Mohinder Singh

and anr., 2005 (4) Law Herald (P&H) 866 and Indian Oil Corpn. Vs. NEPC India Ltd. and others, (2006) 6 Supreme Court Cases 736, referred to by the counsel for the petitioners, do not appear to be relevant in any manner for deciding the controversy in the present case. In addition counsel has read some paragraphs out of book on the Partnership Act written by Sir M.N.Mukerjit, Ex.Chief Justice of Calcutta High Court to say that every partner has implied authority to sell or pledge and part of the goods or other moveable property of the firm, and any such sale or pledge will be binding upon the firm, even though the money raised by it is applied by the partner to his own private use. This appears to be a self contradictory plea. At one stage, it is being pleaded that the partnership between the complainants and the petitioners has been dissolved and they are now running their independent business and at the same time it is being urged that every partner has an implied authority to sell or pledge any part of the goods or other movable property. Even otherwise, it is required to be noticed that the allegation in the present FIR against the petitioners are that they have prepared and forged documents and used the same as genuine to sell some part of the land, which was owned by the complainants. It is not a simple case of sale of assets by partners. It cannot be made out if the land belongs to partnership concern, as it is averred in the petition that land was standing on the individual names of the partners, out of which 1800 Sq.Yards land was owned by the two complainants. In this regard, the averments in Para 10 of the petition may be noticed, which read as under:-

“That the land of M/s Onkar International measuring 4881

Sq.yards was owned by Narinder Singh, Manmohanjit Singh, Kiranjit Kaur, Buland Iqbal Singh and Navtej Singh, to the extent of 900 Sq.Yards each.”

Accordingly, the submissions made on the basis of the commentary in regard to implied authority of a partner as agent of the firm referred to by counsel for the petitioners cannot be of any avail.

No case for quashing the FIR as such, is made out and the present petition is accordingly dismissed.

**December 01, 2006  
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**( RANJIT SINGH )  
JUDGE**